

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

LAVERN BERRYHILL,)
)
Plaintiff,)
)
v.) **No. CIV 10-091-FHS-SPS**
)
)
BRAD HENRY, et al.,)
)
Defendants,)

ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS

Plaintiff Lavern Berryhill, a prisoner appearing pro se and seeking to bring a civil rights action, has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit in conformance with 28 U.S.C. § 1915(a). He alleges, among other things, that more than 100 defendants have engaged in a “race hate” conspiracy to kidnap him and hold him hostage in prison to conceal wrongful convictions. He claims he has been beaten, his food, water, and medications have been withheld, and other inmates have been placed in his cell to kill him. He asks for a declaratory judgment that his rights have been violated, criminal prosecution of the defendants, and monetary damages. The court, however, has determined that plaintiff has had at least three prior civil rights actions that count as “strikes,” pursuant to 28 U.S.C. § 1915(g):

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical harm.

28 U.S.C. § 1915(g).

In *Berryhill v. Poppell*, No. CIV-99-407-D (W.D. Okla. May 25, 1999), the United

States District Court for the Western District of Oklahoma found that plaintiff had filed 11 previous lawsuits pursuant to 42 U.S.C. § 1983. *Id.*, slip op. at 1. Three of the 11 cases were dismissed for failure to state a claim or as frivolous, and one of the dismissals was affirmed on appeal:

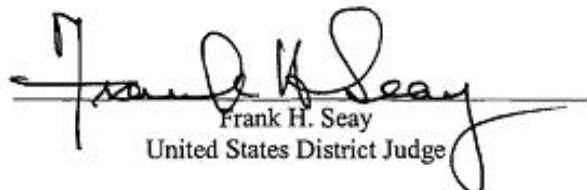
Berryhill v. Beckman, No. CIV-85-1364-E, *aff'd*, No. 86-1533 (10th Cir. Oct. 22, 1986) (motion to dismiss under Rule 12(b)(6) and 28 U.S.C. § 1915(d) granted); *Berryhill v. Maynard*, No. CIV 88-1034-T (motion to dismiss under Rule 12(b)(6) and 28 U.S.C. § 1915(d) granted); and *Berryhill v. Faulk*, No. CIV-92-1705-T (dismissed upon filing for failure to state a claim).

Berryhill v. Poppell, No. CIV-99-407-D, slip op. at 2 n.1.

This lawsuit is premised on plaintiff's allegations that the numerous state and federal defendants, including state and federal judges, have conspired to obstruct justice and to kidnap him because of their racial hatred. After careful review, however, the court finds plaintiff's conclusory allegations fail to set forth a credible claim that he is in imminent danger of serious physical harm and that he qualifies for the exception in 28 U.S.C. § 1915(g).

ACCORDINGLY, plaintiff's motion for leave to proceed *in forma pauperis* [Docket #2] is DENIED. Plaintiff is directed to forward the \$350.00 filing fee to the Court Clerk within twenty (20) days. The agency having custody of plaintiff is ordered to release funds from plaintiff's accounts, including plaintiff's trust account, for payment of the filing fee. Failure to comply with this order will result in dismissal of this action.

DATED this 12th day of April, 2010.



Frank H. Seay
United States District Judge